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July 28, 1999

BY HAND

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

Re: IB Docket No. 98-192; File No. 60-SAT-ISP-97
In the Matter of Direct Access To the INTELSAT System
Ex Parte Communication

Dear Ms. Salas:

By its undersigned attorney, COMSAT Corporation ("COMSAT") hereby submits for filing in the above-referenced docket this notice of oral and written presentations made on July 27, 1999, concerning Direct Access to the INTELSAT system. *See* FCC Notice of Proposed Rulemaking, released October 28, 1999 (designating matter as a "permit-but-disclose" proceeding). On July 27, 1999, Howard D. Polsky and Daniel E. Troy, representing COMSAT, met with Commissioner Harold W. Furchtgott-Roth; Robert Calaff, Legal Advisor to Commissioner Furchtgott-Roth; and David DuBose, Legal Intern to Commissioner Furchtgott-Roth, concerned the above-captioned proceeding. At the meeting, Commissioner Furchtgott-Roth and Messrs. Calaff and DuBose were presented with two written ex parte communications: (1) a four-page document entitled "The 1962 Satellite Act Precludes the FCC From Mandating Level 3 Direct Access to the INTELSAT System"; and (2) a one-page graphic entitled "The Certain Harms of Allowing INTELSAT to Have Direct Access to the U.S. Market before Privatization Outweigh Any Possible Consumer Benefits."

The subject of the oral presentations were consistent with the views set forth in the enclosures to this notification, which were given to the above-named FCC personnel during the meetings, as well as written materials previously submitted in this docket.

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In accordance with Section 1.1206(b) of the Commission's rules, two complete copies of this notification are enclosed for filing. Additional copies are being furnished under separate cover to the above-named FCC personnel.

Please date-stamp the attached duplicate upon receipt and return it via messenger for our records. If any questions arise concerning this matter, kindly contact the undersigned.

Sincerely,

Daniel E. Troy

Enclosures: (1) The 1962 Satellite Act Precludes the FCC From Mandating Level 3 Direct Access to the INTELSAT System (2 copies)

(2) The Certain Harms of Allowing INTELSAT to Have Direct Access to the U.S. Market before Privatization Outweigh Any Possible Consumer Benefits (2 copies)

cc: Commissioner Harold W. Furchtgott-Roth
Robert Calaff, Esq.
David DuBose, Esq.
Howard D. Polsky, COMSAT Corp. Vice President, Federal Policy & Regulation

The 1962 Satellite Act Precludes the FCC From Mandating Level 3 Direct Access To the INTELSAT System

1. **The Satellite Act is clear on its face that Congress granted to COMSAT an exclusive franchise to provide service over the INTELSAT system.**

   - In its opening "Declaration of Policy and Purpose," the Act states expressly that "United States participation in the global system shall be in the form of a private corporation." [Which became COMSAT].
   - The nature of such participation is spelled out in Section 305(a) where COMSAT is the sole identified U.S. entity with authority to:
     - "plan, initiate, construct, own, manage, and operate . . . a commercial communications satellite system"; and
     - "furnish, for hire, channels of communication to United States communications common carriers and to other authorized entities, foreign and domestic."
   - Despite the fact that these aspects of U.S. participation are set forth as COMSAT-authorized activities in the *same subsection*, the NPRM inexplicably claims that
     - the Company's roles with respect to governance and operation are exclusive; but that
     - its role in furnishing channels of communication is non-exclusive.
   - But, when the Congress wanted other U.S. entities to play a role with respect to the envisioned global system, it said so explicitly. E.g.:
     - § 207(c)(7) allows other carriers to own and operate earth stations.
     - § 304(b) allows "authorized carriers" to own stock in COMSAT.

2. **All participants in deliberations over the Satellite Act recognized that Congress was granting COMSAT an exclusive franchise over access to the new satellite system. E.g.:**

   - *The Administration* - - the Deputy Attorney General testified that the legislation called for "one corporation engaged in transmission of messages by satellite, perform[ing] services for all authorized communications carriers in this country. . . ."
   - *The Congress* - - the Chairman of the House Science and Astronautics Committee explained that, while foreign participants would control usage of the system in their own countries, the U.S. participant (COMSAT) would have exclusive U.S. access.
   - *The Commission* - - FCC Chairman Newton Minow testified (about a week before the Act was passed) that "capacity must be obtained, of course, from the satellite corporation" and that the corporation would be a "common carrier's common carrier."

3. This understanding was restated in an unbroken chain of Commission and court decisions for almost 40 years. E.g.:

- In 1966, the agency noted that it "is not given authority to license any other U.S. carrier to operate the space segment. . . . Instead, such carriers must procure the space segment from COMSAT."
- In 1970, the FCC characterized COMSAT as "the chosen instrument to provide space segment facilities to licensees of earth stations in the United States."
- In 1975, the Commission held that "[a]s U.S. participant in INTELSAT, Comsat has the sole right to obtain capacity in the INTELSAT satellites in order to provide international communications satellite services to U.S. communications common carriers and other authorized users under published tariffs."
- In 1980, the Commission again reiterated that the Satellite Act "creates a single entity in the form of a private corporation to carry out its objectives and purposes. [I]t endows [COMSAT] with extraordinary powers and privileges to carry out its mission, including monopoly status in the provision of services via the satellite system to authorized U.S. users."
- In 1984, the FCC recognized that COMSAT "operates as a carrier's carrier in that it is the sole provider of . . . space segment service utilized by other international carriers in the provision of their end-to-end services."
- Also in 1984, the FCC noted that "[s]ince the inception of the INTELSAT global satellite system, Comsat has served as the U.S. Signatory to INTELSAT, the sole U.S. investor in the system, *and the monopoly supplier of INTELSAT space segment services* to [U.S. international service carriers]."
- Similarly, in 1991, the Second Circuit explained that the Act made COMSAT "the sole provider of access to the global satellite system [INTELSAT] to U.S. communications carriers."
- The D.C. Circuit in 1984 also noted that COMSAT is the "sole entity permitted access to the [INTELSAT] system."

4. **The NPRM wrongly claims that mandated direct access is supported by § 201(c)(2) which sets forth the FCC's authority to insure that authorized carriers receive "nondiscriminatory" and "equitable" access to the system.**

- Because COMSAT was given the exclusive right to own and operate the system, this section is intended to ensure that all U.S. carriers be given non-discriminatory access to COMSAT's facilities (i.e. that COMSAT not favor some users over others in providing access to the system). This section does not place U.S. carriers on equal footing with the sole designated direct U.S. participant in the new system.
- In the context of the Act, it is evident that these goals were to be achieved by treating COMSAT as a "common carrier" fully subject to Title II of the Communications Act (Satellite Act § 401).
- Indeed, given INTELSAT's full range of privileges and immunities, the FCC (in a direct access regime) would have no authority to assure that the international organization provided "nondiscriminatory" and "equitable" access to the global system.
- As a matter of law, this objective can only be achieved by the FCC through common carrier regulation of the designated U.S. participant - - COMSAT.
- Moreover, as the Supreme Court has recognized, "statutory construction . . . is a holistic endeavor." A single clause or phrase can not simply be ripped out of context. The Court has said that "context counts . . . In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy."
- If the legislative policy was as suggested in the NPRM, it is truly amazing that it was not mentioned by a single participant in the 2-year debate over the Act.

5. The NPRM wrongly asserts that the use of differing language to establish exclusivity in the 1978 Inmarsat Act supports the claim that access under the 1962 Act was to be non-exclusive.

- The Inmarsat Act of 1978 authorizes COMSAT's participation on behalf of the United States in another intergovernmental satellite organization, Inmarsat.
- The legislative history of the Inmarsat Act states that the Act was directly "modeled on the 1962 [Satellite Act,] which provided the legislative basis for U.S. involvement in [INTELSAT] by way of a special corporation, Comsat."
- As part of this "model[ing]," Congress in 1978 deliberately echoed the well-settled interpretation of the 1962 Satellite Act by designating COMSAT "as the *sole* operating entity of the United States for participation in INMARSAT, for the purpose of providing international maritime satellite telecommunications services." 47 U.S.C. § 752(a)(1)
- Even the opponents of the 1978 Act (such as NTIA) recognized that enactment of the Act would "extend COMSAT['s] *existing* statutory monopoly into a new field."
- In 1979, the FCC construed the 1962 and 1978 Acts *in pari materia* and held that both Acts designate "COMSAT as the chosen instrument of the United States to participate in international cooperative ventures for the establishment of global communications satellite systems."
- Any minor differences in language between the 1962 and 1978 Acts are attributable to the elapsing of sixteen years and the development of an entire lexicon of industry "terms of art."
- That two different Congresses, separated by 16 years, would use slightly different words to express the same concept is especially irrelevant where, as here, the factual settings were markedly different:
  - In 1962, neither COMSAT nor INTELSAT were yet in existence
  - In 1978, both COMSAT and Inmarsat existed; the 1978 statute refers directly to both entities.

The Certain Harms of Allowing INTELSAT to Have Direct Access to the U.S. Market before Privatization Outweigh Any Possible Consumer Benefits